

EXAM NO. _____

CRIMINAL LAW
Sections A1 & A3

Final Examination
December 11, 2006

2½ Hours
1:00-3:30 p.m.

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



"Really? That's the first time you've eaten somebody?"

OPEN BOOK
Instructions

The three problems are of unequal weight in grading. Each is worth a point value proportionate to its suggested time. Budget your time accordingly.

Answer all the questions reasonably raised in each problem even though your resolution of a prior issue in the same problem may technically make decision of the other issues immaterial. If you believe that you need more facts than are presented to adequately resolve an issue, indicate specifically what facts you believe you need and why.

Specific citations to cases are welcome but not as a substitute for thinking, i.e. do not use case citations *instead* of clearly stating the relevant point of view.

I. (45 minutes)

Consider the following factual scenario:

“Defendant, Tyrone McKee, and his girlfriend, Faye McBride, went to a club to celebrate Jeffrey Hazzard’s birthday, where they both drank heavily. McKee got into a fight outside of the club, and one of his punches landed on McBride’s face. McBride told McKee that she did not want him to live in her apartment any longer, and that he would have to leave. She left the club with Hazzard and headed home. McKee was already there when McBride and Hazzard arrived. McBride began to put McKee’s possessions on the front porch, and she asked him to return her key.

“After awhile, Hazzard was able to calm McKee down; but McKee and McBride continued to argue. Soon, Marco Tilley drove up to wish Hazzard a happy birthday. Tilley told McKee to ‘chill out’ and McKee responded that Tilley should ‘stay out of it.’ An argument ensued and McKee told Tilly to go get his guns, adding that he (McKee) had his. McBride went into a back bedroom, yelling, ‘Kill each other for all I care. Go ahead! Good riddance!’

“Tilley went to his vehicle and retrieved two handguns. He approached the porch with his arms crossed and a gun in each hand. McKee took a gun out of the waistband of his pants and started shooting. He wounded Tilley and fatally shot Hazzard; he fled the scene for two or three minutes and then returned. Shortly thereafter, he was arrested and placed in the back of a patrol car. As he was being driven to a police station, McKee spontaneously said: ‘I did not mean to kill Jeff. Jeff got in the way. Jeff is my best friend.’”

Cf. McKee v. State, 632 S.E.2d 636 (Ga. 2006).

You are a public defender in Savannah, Georgia, where the facts set out above took place. You moved to Savannah after graduation from Pitt Law School assuming that there would be less crime there than in Pittsburgh. Think again. McKee and McBride have both been charged with the attempted murder of Tilley and with the first-degree murder of Hazzard. What tenable defenses do you have to these charges? What are your chances of success? Discuss.

II. (75 minutes)

Azamat was driving home to his parents' home in Astana for the Christmas holidays on the interstate highway just inside Kazakhstan County, Pennsylvania (one of the states in the United States), when a deer suddenly bounded across the highway, causing another driver, Stephen Colbert, to swerve to avoid it. Swerving caused Colbert to crash into the rear of Azamat's car, propelling it into the rear of the car in front of him, driven by Ali G. Unfortunately, a passenger in Ali G's car, Sasha, who had not been wearing a seatbelt, was badly injured when the airbag in Ali G's car inflated as a result of the crash and smashed into her face, breaking her glasses sending hundreds of glass shards into both of her eyes, blinding her.

The police arrived and an ambulance was called to the scene. The ambulance started to rush Sasha away toward the nearest hospital at a very high speed. Unfortunately, when the ambulance driver turned on his siren before leaving, it startled the same deer that had caused the initial string of accidents, spurring him to dash right back into the road, directly into the path of the ambulance which was just pulling away, resulting in another crash. In this crash, Sasha was killed by being impaled upon an aluminum crutch which was sent flying into one of her ears and out the other. The crutch was supposed to have been stowed so that it couldn't move around when the ambulance was moving, but the ambulance driver, who was "high" on fermented horse urine, had purposefully failed to stow it, hoping that it might be thrown around if the ambulance crashed and that it would impale a sick passenger.

Moreover, as it turned out, the "deer" that caused the accidents was not really a deer at all. Rather, it was Borat, dressed in a (very, very good) deer suit. After putting on his Rudolph-the-Red-Nosed-Reindeer costume to rehearse for a church holiday pageant, Borat had consumed eight bottles of beer and injected himself with heroin. At that point, Borat actually believed he was a deer, and started bounding around, with the results as described above. He never realized that he was on the highway; he thought he was prancing around in an enchanted forest. After the crash of the ambulance in which Borat was grazed by the vehicle, hard enough to break his left arm, Borat's deer costume was mostly ripped off of him. When Azamat and Ali G discovered that Borat was a human, not a deer, they started kicking him mercilessly until one of the police officers at the scene made them stop. Borat suffered three broken ribs, a black eye, a concussion, numerous bruises, and a torn antler on his deer costume as a result of the vicious kicking.

You are an Assistant District Attorney in Kazakhstan County. Your boss, District Attorney John Burkoff (played by his body double, George Clooney), has asked you to assess for him the likelihood of successful prosecution of the following people on the following charges: (1) homicide charges against Borat for the death of Sasha; (2) homicide charges against the ambulance driver for the death of Sasha; (3) homicide charges brought against Azamat for the death of Sasha; (4) charges brought against Azamat and Ali G for the attempted murder of Borat; (5) charges brought against Azamat and Ali G for conspiracy to murder Borat; and (6) charges brought against the ambulance driver for attempted cruelty to animals in running into the deer (who was actually Borat). What is your response to Burkoff?

III. (30 minutes)

A bill introduced in the state Senate of a Midwestern state, Oklabraska, provides as follows:

“A person who is charged with any criminal offense in this state in which the possession of a weapon is an element of that offense shall, if convicted of that offense, receive an additional term of imprisonment of a minimum of five years, above the maximum penalty provided for in that criminal offense, if but only if: (i) the weapon had not been registered at the time of the offense with the appropriate state authorities pursuant to applicable registration requirements; or (ii) the weapon was used in a crime involving any victim who was under the age of twelve years, over the age of sixty years, or, regardless of age, who was disabled at the time of the crime.”

You are a legislative aide to an Oklabraska state Senator. She asks you to advise her about two questions:

- (1) Is this bill likely to be constitutional when and if it is passed?
- (2) Should she support this bill as a matter of sound public policy?

Advise her.

Professor Burkoff

